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Draft report

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Addendum

Thematic discussion on international cooperation in criminal matters

1. At its 3rd, 4th and 5th meetings, on 13 and 14 May 2014, the Commission considered agenda item 4, entitled "Thematic discussion on international cooperation in criminal matters". The discussion focused on the following topics:

(a) Specific modalities of international cooperation in criminal matters:

(i) Extradition and mutual legal assistance;

(ii) International cooperation for the purposes of confiscation;

(iii) Use of other forms of international cooperation in criminal matters;

(b) How to manage international cooperation in multiple legal proceedings in which the same individual is involved;

(c) Implementing international instruments containing provisions on international cooperation in criminal matters;

(d) Learning from experiences at the regional level;

(e) International cooperation in combating new and emerging forms of crime;

(f) Provision of technical assistance;

(g) Addressing the gaps — the way forward.

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2. For its consideration of agenda item 4, the Commission had before it a note by the Secretariat containing the discussion guide for the thematic discussion on international cooperation in criminal matters (E/CN.15/2014/12).

3. In accordance with the decision of the Commission at its reconvened session in December 2013, all of the topics were discussed at both the morning and afternoon meetings. At the morning meeting, participants focused on taking stock of lessons learned and challenges faced, while at the afternoon meeting, participants discussed further action to address challenges faced, bearing in mind paragraph 21 of the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, which was referenced in Economic and Social Council decision 2010/243, in which the Council decided on the prominent theme for the session.

4. The thematic discussion on item 4 was presided over by the Chair and led by the following panellists: Adel Ahmed Fahmy (Egypt), Mohammad Hossein Ghaniei (Islamic Republic of Iran), Vladimir Zimin (Russian Federation), Sabas Chahuán Sarrás (Chile), Janet Henchey (Canada), Victor Mule (Kenya), Liu Yang (China), Sergey Borodulin (Russian Federation), José Merino Madrid (Mexico) and Lieve Pellens (Belgium).

5. The Chair made an introductory statement. An introductory statement was also made by the Chief of the Conference Support Section of the Organized Crime and Illicit Trafficking Branch of the Division of Treaty Affairs of UNODC. Statements were made by the observer for Morocco (on behalf of the African Group) and by the representatives of Croatia, Algeria, Germany, Japan, the Republic of Korea, Thailand, China, Indonesia, Norway, Kenya, Brazil, Uruguay, the United States of America, Colombia, Austria and South Africa. The observers for Costa Rica, Liechtenstein, Venezuela (Bolivarian Republic of), Trinidad and Tobago, Romania, Azerbaijan, Yemen, Georgia, Australia, Burkina Faso and Slovenia also made statements. The observers for the World Health Organization and the Korean Institute of Criminology made statements. The observers for Amnesty International and the International Sociological Association also made statements.

A. Summary by the Chair

6. The Chair's summary of the salient points, which was not subject to negotiation, is presented below.

7. The globalization of criminal activity, including through offences that engaged multiple jurisdictions, had created a need for strengthened forms and models of international cooperation. Further challenges included impunity, differences in national legislation and legal systems, the lack of bilateral treaties, where required by national law, the large amount of time often needed to respond to judicial cooperation requests, the high volume of requests, language barriers, varying levels of evidentiary requirements, the impact of the strict application of grounds for refusal, and the relationship of extradition requests to claims for refugee status.

8. It was noted that existing treaties and mechanisms should be used and that the international cooperation provisions of the United Nations Convention against

Transnational Organized Crime and the United Nations Convention against Corruption provided well-balanced and stable multilateral bases for international judicial cooperation and that their application should be further strengthened. The need to improve the implementation of those Conventions at the national level was highlighted.

9. Many speakers emphasized the value of regional legal instruments. Some speakers referred to strengthening legal frameworks, including through examining the possibility of creating global instruments on international judicial cooperation in criminal matters, as well as on cybercrime. Some speakers discussed the initiative on a multilateral treaty for mutual legal assistance and extradition in domestic prosecution of the most serious international crimes. Diverging views were expressed as to whether international cooperation in criminal matters relating to genocide, crimes against humanity and war crimes was within the mandate of the Commission.

10. In addition to the use of treaties, some speakers reported the possibility of and the need for cooperation on the basis of the principle of reciprocity.

11. In addition to extradition and mutual legal assistance, the utility of other forms of cooperation, including execution of foreign sentences, transfer of sentenced persons, temporary surrender and joint investigations, was highlighted. Some of those forms of cooperation provided options in cases in which States did not extradite their own nationals. The importance of the application of the *aut dedere aut judicare* principle was stressed. All forms of international cooperation were considered to require mutual understanding and trust, and it was suggested that they should be applied in a flexible and innovative manner.

12. A number of practical steps could be taken to strengthen the effectiveness of international cooperation, including the use of consultations prior to formal requests, the use of videoconferencing, a strong role for central authorities and the need for direct communication among them, the use of electronic means for transmission of requests, the provision of information on national laws and requirements, the involvement of liaison officers and the establishment of policies on *de minimis* requests. The importance of technical assistance and capacity-building for central authorities and prosecutors, including on new and emerging forms of crime, was emphasized. The efficacy of regional and subregional cooperation platforms and of networks of prosecutors was highlighted. Such coordination arrangements could be especially valuable in resolving multijurisdictional cases and multiple legal proceedings involving the same individual. The importance of coordination among relevant authorities at the national level was also noted.

13. The need for effective international cooperation pertaining to requests relating to cybercrime and digital evidence, as well as in cases of money-laundering and for the confiscation of criminal assets, was emphasized. The extension of international cooperation to civil and administrative proceedings relating to the offence in question was suggested. A number of speakers referred to the need to respect international human rights standards and the rule of law in international cooperation processes.

14. Some speakers urged those Member States that had not yet done so to ratify the Protocol to Eliminate Illicit Trade in Tobacco Products and expressed support

for cooperation between UNODC and the secretariat of the World Health Organization Framework Convention on Tobacco Control.

B. Workshop on international cooperation in criminal matters

15. The first meeting of the Committee of the Whole, on 12 May 2014, was devoted to a workshop on the theme "International cooperation in criminal matters: current gaps and perspectives of the international, regional and national legislation", organized by the institutes of the United Nations crime prevention and criminal justice programme network. The workshop was chaired by the First Vice-Chair of the Commission and moderated by the Director of Programmes of the International Institute of Higher Studies in Criminal Sciences, affiliated with the United Nations, a member of the United Nations crime prevention and criminal justice programme network.

16. An opening statement was made by a representative of the Secretariat. Presentations were made by panellists from the International Institute of Higher Studies in Criminal Sciences (Italy), the International Association of Prosecutors (Netherlands), the Basel Institute on Governance (Switzerland) and the Korean Institute of Criminology (Republic of Korea). During the discussion, statements were made by the representatives of the United States and Saudi Arabia. A closing statement was made by the First Vice-Chair of the Commission.